

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB DEPRATU**, on March 20, 2001 at 8:00 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bob DePratu, Chairman (R)
Sen. Alvin Ellis Jr., Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Mack Cole (R)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Bill Glaser (R)
Sen. Dan Harrington (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lee Heiman, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: Senate Bill 494, 3/14/2001; SB 498-Dennison presentation
Executive Action: Senate Bill 493 Pass 9-0;
Senate Bill 495 Pass as amended, 9-0

HEARING ON SENATE BILL 494

Sponsor: SENATOR JOHN COBB, SD 25, Augusta

Proponents: Bob Vogel, Montana School Board Association; Stan Kaleczyc, Attorney for Vorizon Wireless; Erik Burke, MEA-MFT; Dick Crofts, Commissioner of Higher Education

Opponents: Mike Strand, Executive Vice President for Montana Independent Telecommunications Systems; John Fitzpatrick, Touch America; Linda West, Ronan Telephone Consumer Advisory; Russ Cravens, Qwest; Geogg Feiss; Angela Janacaro; Mary Whittinghill, Montana Taxpayer Association; Chuck Evilsizer, Hot Springs Telecomm; Bill Squires, Blackfoot; Jay Preston

Opening Statement by Sponsor: SENATOR COBB presented the bill. The bill would change the rate of telecommunications excise tax to make it revenue neutral compared to the telephone license tax and property tax provisions that were enacted in the 1999 Session. He pointed out the Whereas clauses on page one and page two. During the testimony from last Session in HB 128, the idea was to try to lower the property tax and the archaic taxes to help the industry to compete better. However, the money did not come in because the excise taxes were too low. He described the arguments regarding the increase in market values on property taxes. The bill tried to achieve the revenue neutral issue that was raised last Session. **{Tape : 1; Side : A; Approx. Time Counter : 0 - 5.4}**

Proponents' Testimony: Bob Vogel, Montana School Boards Association, said they viewed this bill as a technical corrections bill. When the excise tax was included in HB 128 in the 1999 Session, it was to replace the telephone license taxes and property taxes. This replacement excise tax would be revenue neutral to make sure the state and local governments, schools and consumers would not be affected negatively. Although this bill would increase revenue, it is not an impact - it is merely an adjustment in the excise tax that would in fact make it closer to revenue neutral.

Stan Kaleczyc, attorney for Vorizon Wireless, testified in support of the bill. He pointed out the bill did two things - changes the rates and implements within the state of Montana code the provisions of the Federal Mobile Telecommunications Sourcing Act which becomes effective in August, 2002. The federal law allows the states to tax roaming charges. It determines the source state of service to be able to tax the charges. It prohibits double taxation on consumers. This would not be in effect at the federal level until August, 2002. Since the next Legislature does not meet until 2003, it is important that those provision in SB 494 which address the mobile sourcing, be adopted by the Legislature this time. **{Tape : 1; Side : A; Approx. Time Counter : 5.4 - 9.3}**

Erik Burke, representing MEA-MFT, supported the bill. The reasons for support are the revenue neutrality that was alluded to. The tax reforms that were promised in the 1999 Session had

intended for the legislation to be revenue neutral. He felt this was needed in light of education funding bills and things relevant to state services. This would be a revenue source that would greatly help fill that gap for the next two years. **{Tape : 1; Side : A; Approx. Time Counter : 9.3 - 10.1}**

Dick Crofts, Commissioner of Higher Education, supported the bill as it would help with revenue neutrality over the long term and it was a partial response to the issue of additional monies to support education.

Opponents' Testimony: Mike Strand, representing the Montana Independent Telecommunications Systems, opposed SB 494. He pointed out the tax would represent an increase to consumers. He distributed written testimony. **EXHIBIT(tas63a01) {Tape : 1; Side : A; Approx. Time Counter : 10.1 - 15.1}**

John Fitzpatrick, representing Touch America, spoke against the bill. He said he thought it was appropriate to discuss what went on in the 1999 Session and the fiscal effects of that bill two years later. He noted there was a large number of variables that impacted tax collections of the telecommunications excise tax. He distributed a table comparing tax collections from telecommunications companies before and after HB 128.

EXHIBIT(tas63a02) He pointed out the significant investments made by the telecommunications industry in the state of Montana. The Department of Revenue, in their assessment values, led to a substantial increase in the estimated market value of property. HB 128 cut the assessment rate from 12-6%. At the same time, the telephone excise tax was created and it substantially increased collection. Implementation of different policy decisions ended up being a tax on consumers. The telephone companies are merely the vehicle to collect the money and pass it through to the state. **{Tape : 1; Side : A; Approx. Time Counter : 15.1 - 20.2}**

Linda West, Ronan Telephone Consumer Advisory Committee, opposed the tax increase from a consumer perspective. She distributed written testimony. **EXHIBIT(tas63a03) {Tape : 1; Side : A; Approx. Time Counter : 20.2 - 24.3}**

Russ Cravens, representing Qwest Communications, spoke against the bill. He presented written testimony and a proposed amendment. **EXHIBIT(tas63a04) EXHIBIT(tas63a05)** He felt revenue neutrality should reflect actual numbers. The amendment would clarify that the charges retained by the company would be subject to the excise tax. This would expand the base and help hold down the actual rate of the change. **{Tape : 1; Side : A; Approx. Time Counter : 24.3 - 28.1}**

Geoff Feiss, General Manager of Montana's Telecommunications Association, spoke against the bill. He spoke about the property tax side of the equation as well as the excise tax side. HB 128 reduced some companies tax rates from 12-6% and imposed the excise tax so as to keep the revenue equation neutral. The excise tax was imposed on more companies and more operations than the property tax reduction. It broadened the base of the excise tax collection and some companies had a 50% tax reduction. There were some companies already paying 6% and their customers then got to pay an excise tax when the company did not receive any tax reduction - which were wireless companies particularly and cooperatives in competitive situations where their taxes went up to 6% in return for their investment in the state. They also now have to pass on an excise tax to their customers. It is that point that is not being emphasized enough so now there is a property tax base which is growing, particularly in rural Montana where a lot of these companies are investing millions of dollars. **{Tape : 1; Side : A; Approx. Time Counter : 28.1 - 30.3}** He pointed out this had not raised as much money as the 1999 fiscal note had indicated. However, this should not be the responsibility of the consumers to make the state whole based on the fiscal note or was the intent of HB 128 to be revenue neutral. He felt revenue neutrality had been reached. He noted they had no objections to the mobile sourcing provisions. Another issue was the imposition of the 5% rate until 2002 then it would be 4.84%. The 5% is effective retroactively, going back to 2000 and adding into their tax base the revenues that they lost. This does not seem fair. Some of the benefits of HB 128 were the reduction in rates. Consumers did get reductions in rates or in some cases, access charges were reduced to long distance companies. HB 128 did create a more level playing field on the property tax side and also resulted in consumer benefits in the form of reduced rates and increased investments by telecommunications companies in Montana. Their association did not feel this bill was necessary or appropriate and he urged the committee not pass it. **{Tape : 1; Side : B; Approx. Time Counter : 0 - 6.5}**

Angela Janacaro, representing Brenda Rummel, Executive Director for Montanans' for Competitive Telecommunications, spoke against the bill. She distributed written testimony outlining Ms. Rummel's objections to the tax. **EXHIBIT(tas63a06)**

Mary Whittinghill, Montana Taxpayer Association, spoke against the bill. She said they did concur with the amendments regarding the Mobile Telecommunications Sourcing Act as well as clarification of the effective dates in the bill and clarification on the language proposed by **Feiss** on the end user charges. She pointed out the tax increase would be on the

consumers. They believed that HB 128 took a step forward from lifting from a hidden tax on the telephone tax bill to where you could actually see the taxes that were being collected by these companies to pay to the state of Montana. Overall in the Nation in the last ten years, there has been an increase in selective sales taxes. The selective sales taxes in Montana has risen to 14.5% for state and local taxes, where at the national level it is 9.5%. There is a need to look at both the property tax and the telecommunications tax collected. It has achieved revenue neutrality at this point in time, as expected. The consumers of Montana do not need an additional tax at this time.

Chuck Evilsizer, representing Hot Springs Telephone Company, the Ronan Consumer Advisory Committee and the Ronan Telephone Company, spoke in opposition to the bill. He felt this was an unnecessary additional tax burden on consumers. He distributed his written testimony. **EXHIBIT(tas63a07) {Tape : 1; Side : B; Approx. Time Counter : 6.5 - 12.2}**

Bill Squires, representing the Blackfoot Telephone Company, concurred with **Mr. Fitzpatrick** of Touch America. He said they did support the amendments on the Mobile Sourcing Act. **{Tape : 1; Side : B; Approx. Time Counter : 12.2 - 14.7}**

Jay Wilson Preston, representing Ronan Telephone Company, spoke in opposition to SB 494. He distributed written testimony. He pointed out the "Whereas" language should read "Whereas, we were baited, and Whereas, we were switched". **EXHIBIT(tas63a08) {Tape : 1; Side : B; Approx. Time Counter : 14.7 - 18.2}**

Informational Testimony: Kurt Alme, Director Department of Revenue, distributed a memorandum dated March 20, 2001, regarding the work done by the Department of Revenue and its analysis of the excise tax and compliance activities. **EXHIBIT(tas63a09) {Tape : 1; Side : B; Approx. Time Counter : 18.2 - 29.1}**

Questions from Committee Members and Responses: SENATOR ELLIS asked how much money Quest had invested in Montana. **Mr. Cravens** replied that was about \$50 million dollars in the year 2000. In addition to that was the investment by Qwest Wireless Services, which was separate. **SENATOR ELLIS** asked why Quest should be held harmless as far as property taxes were concerned. **Mr. Cravens** replied that he did not believe that they should. He believed that the property taxes should be assessed against the property that they have as well as the other calculations. He was not asking that they not be. He was asking that the property taxes that are paid be in comparison to the revenue neutrality. Prior increases to property taxes amounted to 2-3% a year until the

changes in the way the department calculated taxes in 2000, which amounted to a 20% increase. **{Tape : 1; Side : B; Approx. Time Counter : 21.9 - 32.4}**

Mr. Cravens clarified that the reduction in the tax rate was applied. He believed that in other adjustments and calculations the department, in assessing their market value and taxable value, that rather than seeing a 50% reduction in rates, the assessments ended up at a 11.2% tax rate. That difference of about \$2 million dollars was associated with a new assessment and a new evaluation of the company. It was because of a change in the way the department calculated the tax. **SENATOR ELLIS** said taking into account the value of the new investments made subsequent the law, in reaching for tax neutrality, would that result in a tax credit against excise taxes going forward. **Mr. Cravens** replied that their position was the need to include all of the properties in the calculation. The investments made in the year 2000 were similar to previous years. He noted at the outset of the excise tax that they find a place that was revenue neutral. The establishment of an appropriate rate should use the actual figures, establish the revenue neutrality limit, and then move ahead as there are two taxes involved. **{Tape : 2; Side : A; Approx. Time Counter : 0 - 3.1}**

SENATOR ELLIS questioned the different handling of the property and what exactly happened. **Mr. Alme** clarified the question was whether the increase in the property taxes paid by the industry for 1999-2001 should be offset was a policy question. He could factually explain what happened. Whether or not it should be taken into account at this juncture was a policy question. **SENATOR ELLIS** noted it was the policy of the Legislature since 1980 to hold Class 4 residential harmless from reappraisal. In doing so, that has resulted in a mill increase for practically all classes of property. Was this the basis of most of the problem that Quest was alluding to? **Mr. Alme** said it was his understanding that the actual figures from 2001 could now be used.

SENATOR GLASER asked whether the conclusions were reasonable. **Brad Simshaw** from the Department of Revenue described the mill levy as a contributing factor to an increase in property taxes paid by telecommunication property owners and all property in general. He noted there were three main factors that contributed to a change in property tax liability from 1999 to current year. One would be the change in the mill levy, another would be an annual reappraisal process, and the third would be the amount of investment made during that time by the companies. The amount of market value changed during that two years from 13-15%. **{Tape : 2; Side : A; Approx. Time Counter : 3.1 - 11.7}**

SENATOR HARRINGTON noted that when HB 128 passed it was considered revenue neutral, however it was proven that was not true. He asked how the problem arose. **Mr. Strand** replied that he disputed that outlook. He stated he did not believe it was proven at all that HB 128 was not revenue neutral. HB 128 was revenue neutral. The Legislature made a separate policy decision that intangible property should not be taxed. We can't come to 2001 and say well HB 128 was not revenue neutral because you are not getting enough property taxes like you were in 1999 as a result of the fact that intangibles are no longer taxed. That was a completely separate policy decision. You can't say how are we going to roll in revenue neutrality with respect to intangible property, or why, as it has nothing to do with HB 128. **SENATOR HARRINGTON** said when the changes were made they said this was the amount of money that has to be raised to make it revenue neutral and that didn't occur. **Mr. Strand** replied that the fiscal note in 1999 was accurate. The industry needed to raise \$26 million dollars as a result of the excise tax. That was the estimate in 1999. We are now in 2001. Now we can determine how much the reduction in property taxes have impacted our revenue stream. The \$26 million estimate has no bearing on reality. He could not understand how the bill could be passed out of committee without a real analysis and what the real remedies are today from the property tax reductions and the license tax reductions. **SENATOR HARRINGTON** replied when the estimates were set and the tax policies laid out - it did not work out that way. What we were trying to do through this whole transition period was to reach that point and that did not happen. He asked if **Mr. Strand** was saying what we did then did not mean anything. **Mr. Strand** replied the agreements meant a great deal. He pointed out these were separate policy decisions by the Legislature. It does not automatically follow that you can decide, for example, not to tax intangibles - or to give a tax credit for the excise tax. That is not the hot issue, the hot issue is whether to roll the excise tax on consumers. Those are separate policy decisions by the Legislature that have nothing to do with HB 128 or have nothing to do with the deliberations on HB 128 and have nothing to do with any of the agreements that were formed on HB 128. He stated that was their position.

SENATOR STONINGTON asked what calculations were included to arrive at revenue neutrality when considering the impact of the excise tax imposition. She asked if the department included an assessment of property tax and license tax to excise tax revenues. Were the \$2 million dollar investment credits and intangible property tax reductions factored into that? **Mr. Simshaw** replied the question was focusing on neutrality in the fiscal note with the key pieces being on the property tax side. These were standard calculations and he was unsure if SB 111 had

been considered. This was not a large factor on the intangible side. He was not sure whether the investment credits had been considered. **SENATOR STONINGTON** said she thought the companies made a credible case. There had been a variety of tax policies made during the Legislative Session. They interact. Revenue neutrality may have been the goal between the telephone excise tax and the other two taxes that were lowered. Other policy factored into that decision. The case they are making is you can't say this is "apples to apples" when you are throwing oranges into the mix. This is a credible argument and there is a need to explore further just what this analysis actually takes into account. **SENATOR ELLIS** brought up the increase in mill levies. This ought to be considered. Investments and the annual reappraisal was included. If we were giving them tax credits for investment, if we had eliminated taxes on intangibles and those were part of their property valuations - those all have to be counted into how revenue neutrality is to be measured. She wondered if the analysis of revenue neutrality factored all of these elements. **Mr. Simshaw** replied the key to that approach is the definition of "revenue neutrality" and keeping in mind the time that definition was made or is made now. He suggested going to the 1999 Session to see what was included. The question of how that relates to the current situation now is you may have to take a step back to see what numbers went into the decision making process at that time. As far as now - you are getting into a policy situation. **SENATOR STONINGTON** said that was the case the companies are trying to make. You can't take all those elements from two years ago and measure them straight across. You can't do it because of the other decisions that took place.

{Tape : 2; Side : A; Approx. Time Counter : 16.5 - 20.9}

SENATOR STONINGTON said there were two elements in the bill. One was the increase in the excise tax and the other was the inclusion of the mobile sourcing as a tax source. She asked for clarification of who was paying that roaming charge tax now and what difference the amendments would make to the statutes in terms of revenue. **Mr. Gene Walborn**, from the Department of Revenue, explained the Mobile Sourcing Act allowed the state of Montana to deal with how roaming charges for cellular phones are taxed in terms of tax jurisdictions. The industry, the FTC and state organizations got together to determine a way to source roaming charges to jurisdictions. There is a clearing house for roaming charges. You pay the tax in the area where you used your phone. The sourcing act simplifies it for everybody. The calls have to originate, terminate in Montana or have a Montana billing address to get the revenue sourced here. This whole act clarifies that. The revenue collected under roaming is \$600,000. **SENATOR STONINGTON** asked for a breakdown that could be attributed to the increase in the excise tax and the increase in the roaming

charge tax. **{Tape : 2; Side : A; Approx. Time Counter : 20.9 - 25.8}**

SENATOR BOHLINGER noted that **John Fitzpatrick** had indicated an increase in value of \$108 million dollars in growth of the industry, an increase of 16%. This is a reflection of a business decision that there is a growth opportunity here and they have confidence in the long term economy in Montana. SB 494 has been described as a tax on consumers. He asked what the typical consumer would be paying in terms of increased costs because of SB 494. **Ms. Whittinghill** noted there was a charge of 3.75% up to 5%, depending on the type of service. Other charges combined make it clear that there are hidden charges still within the Qwest bill, as they are a rate regulated company and their property tax charges went up 6% and are going through to the consumer. The original HB 128 is a 3.75% charge that the consumer can clearly see. She discussed new charges on her utility bill and additional charges with the cable television bill. Clearly the charges, separately, are not that much - but the charges of the combined excise taxes in Montana are 14.5%.

SENATOR BOHLINGER asked what charges specifically were paid by the typical telephone user in dollars. He noted that tax policy had been established that provided incentives for companies at some cost with the hopes of seeing a growth within the economy. **{Tape : 2; Side : A; Approx. Time Counter : 23.9 - 30}**

Ms. Whittinghill said their position was that this was revenue neutral and that it was early in the game because of the continuing compliance efforts that the Department of Revenue was undertaking. She pointed out this one industry should not be singled out to fund education. **SENATOR BOHLINGER** commented that the tax policy was a reflection of our values. If we value education and recognize the need for additional revenue - it would be appropriate to look closely at what this might generate.

Closing by Sponsor: **SENATOR COBB** described mistakes made with regards to revenue neutrality and industry estimates of amount of tax owed. The issue is what is revenue neutral. There has been a debate about HB 128, some people paid more, some less. That has already been decided. The question is how do you fix this mistake. It is a policy decision. A mistake was made. We made a deal with the industry to pass HB 128 at 3.75%. In return, we made a deal with local government to reimburse them for the loss. There has been a shortage in this area. The question is: if we are only raising this much money, then if we are not going to change the rate we ought to go back and let local governments raise mills on these people. You can't have it both ways. We cannot keep subsidizing local governments for the difference that we thought the industry would provide. They worked on this

together and it was a mistake that now needs to be fixed. No one wants to pay the difference. He noted the industry did not like the Whereas clauses. He stated that was too bad because that is what the industry said. They said it would be revenue neutral and would not be a black hole and would reimburse the counties and make everybody whole. That is what this bill will do. If you don't pass this tax, then we need to cut local governments - because that is the loss we said we would make up. **{Tape : 2; Side : B; Approx. Time Counter : 4.6 - 7.3}**

SENATE BILL 498 - PRESENTATION

President George Dennison, University of Montana, addressed the committee. He said the proposal was developed as a way to provide revenue for infrastructure. A significant group of people who come to the state as tourists do not make contributions. He discussed the exclusions of residents. The bill is designed to distribute costs of maintaining necessary structure and asks for those who make use of the state to make a contribution. It takes the form of a 4% tax on particular types of transactions. Exclusions would be things that were already taxed by the state of Montana. The bill includes a 5% rebate to merchants to assist them in costs of collecting the tax and 1% to the Department of Administration. The bill is designed to provide revenue so as to sustain the higher education system.

CHAIRMAN DEPRATU pointed out the difficulty of exempting minors. Auditors would have a problem auditing a business. Mr. Dennison responded there would be a need to develop procedures in order to do this. **{Tape : 2; Side : B; Approx. Time Counter : 6 - 16.3}**

EXECUTIVE ACTION ON SENATE BILL 493

SENATOR BOHLINGER MOVED DO PASS. **SENATOR ELLIS** pointed out there was no fixed level of how much money could be invested in equities. He felt it would be appropriate to set a goal. He said the way it was set up now, they would invest in the S&P 500 and leave it there for a long time. This would reduce short term revenue. Another approach may be investment in a mutual fund or invest in those companies with lower PE ratios and then sell periodically in order to get revenue through capital gains quicker. **SENATOR BOHLINGER** responded to the concerns raised. He pointed out SB 494 was a Constitutional amendment and was just asking for the authority to invest in equities. The question should be broadly phrased, tied to a specific percent of the entire portfolio. **{Tape : 2; Side : B; Approx. Time Counter : 16.3 - 28.4}**

The question was called. The motion **PASSED** unanimously.

EXECUTIVE ACTION ON SENATE BILL 495

SENATOR COLE MOVED THE BILL. SENATOR ELLIS MOVED THE AMENDMENT #049502. EXHIBIT(tas63a10) Mr. Heiman explained the amendment. He said it would provide the administrative detail regarding contracts that were involved. **{Tape : 3; Side : A; Approx. Time Counter : 0 - 2.2}**

SENATOR COLE said it was his understanding that the amount of the loan was to be \$64 million rather than \$100 million and he wondered if it could be amended to reflect this. **Mr. Thielman** replied this could be done and still achieve the same objective. You would not know exactly what it would cost to buy production rights. He said \$75 million would allow for variations in negotiations.

SENATOR COLE said he would like to amend the amendment on page 3 to \$70 million. **SENATOR ELLIS** said he did not think he would vote for that amendment. He could see the concerns but this would tie the hands in the Initiative and result in a failure because we tried to negotiate too cheaply. **SENATOR COLE** said he would rather be on the conservative side when making this loan. He wanted to hold it down so would agree to amend him amendment to \$75 million dollars. **CHAIRMAN DEPRATU** clarified this would amend the amendment to change the \$100 million to read \$75 million.

The question was called on the amendment. The amendment was **ADOPTED** with a vote of 8-1.

The question was called on amendment as amended. The motion was **ADOPTED** unanimously.

SENATOR STONINGTON presented an additional amendment. **EXHIBIT(tas63a11)** She said the amendment clarified that the money would be used for the funding structure. The question was called. The amendment was **ADOPTED** unanimously.

The question was called on the bill as amended. The motion **PASSED** unanimously. **{Tape : 3; Side : A; Approx. Time Counter : 2.2 - 10.5}**

ADJOURNMENT

Adjournment: 10:13 A.M.

SEN. BOB DEPRATU, Chairman

DEB THOMPSON, Secretary

BD/DT

EXHIBIT (tas63aad)